

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed **09/28/2005**. Consideration and allowance of the application and presently pending claims as amended, is respectfully requested.

### **1. Present Status of Patent Application**

Upon entry of the amendments in this response, the following amended and original claims will be pending:

**Original claims: 1-3, 5-10**

**Amended claims: 1 – 3 and 8 - 10**

**Cancelled claims: NONE**

**New claims: 11**

Please note that claim 4 was inadvertently omitted from the numbering sequence of the originally submitted claims. Thus, the originally submitted claims were 1-3 and 5 – 10. The above recitation of claims notes that claim 4 was omitted from the originally submitted group of claims.

Amendments to the claims herein are specifically described hereinafter. It is believed that the foregoing amendments add no new matter to the present application and place the claims in condition for allowance.

### **2. Rejection of claims 1 – 6 and 8 - 10 under 35 U.S.C. §103**

Claims 1 – 6 and 8 - 10 have been rejected as being unpatentable over RAIDEL (USP 4541653) in view of BORNS et al (USP 3850445). It is respectfully submitted that the Office Action herein does not establish a case of *prima facie* obviousness with regard to claims 1 – 6 and 8 - 10. The mere fact that the prior art can be modified so as to result in the combination defined by the claims at issue does not make the modification obvious unless the prior art suggests the desirability of such modification.

The office action states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify RAIDEL with the teachings of BORNS to connect the two arms with a shackle in order to provide a simplified connection with an additional degree of movement between the arms. The office action makes no assertion that the prior art teaches or suggests the desirability of the modification/combination proposed by the office action. Applicants note that RAIDEL is directed to an air spring suspension with angular torque beam, u-joint mount therefore, and lateral guides, while BORN is directed to a combined air spring and leaf spring suspension.

RAIDEL shows a first horizontal member 24, a second horizontal member 26, and a generally vertical member 28 extending there between. An air spring 30 is bolted to and extends between the second horizontal member 26 and a chassis 32. The axle 34 is fixedly secured to the first horizontal member 24 by an axle seat assembly 36 (see column 5, lines 32 – 41). The BORNS system is far more complex than the system of RAIDEL or the proposed invention. BORNS describes a system that includes, among other things, a conventional shock of 36 a leaf spring 28 that is comprised of a number of leaves 40-48 in stack relation. Top leaf 40 has an eye 50 at one end which is disposed between depending legs 52, 54 of a bracket 56 secured to frame 12. A beam 76 extending generally parallel to an axle 18 is suspended from leaf springs 28 by a hanger 78 secured to each end of the beam as by welding 80 (FIG. 7) (see column 1, line 64 column 2 line 31).

Someone looking to provide a simple air suspension system that provides improved ride characteristics and that can be easily adapted to various size vehicles without having to produce multiple vehicle specific parts would hardly be drawn to the multi-part, leaf spring plus shock absorber system described by BORNS for an answer.

The mere fact that the prior art can (arguably) be modified so as to result in a combination supposedly defined by the claims at issue does not make the modification obvious unless the prior art teaches or suggests the desirability of such modification.

No such suggestion or teaching is provided by the cited prior art. For this reason, applicants believe the office action has failed to establish a case of *prima facie* obviousness with regard to claims 1 – 6 and 8 - 10.

The proposed modification of RAIDEL to include the shackle of BORNS would complicate the structure of RAIDEL, thus making it more costly to manufacture or assemble. Further, it would impede, if not destroy, the functionality of RAIDEL.

The proposed modification would yield a system in which second horizontal member 26 is pivotally supported by the shackle of BORNS at one end and a torsional roll bar 48 at the other end. If the torque beam 22 of RAIDEL is connected to the second horizontal member 26 by a shackle as in Borns, as the office action suggests, the functionality of RAIDEL will be destroyed. Moreover, the second horizontal member 26 would become a longitudinally unsupported unit that would drop downward and contact the lower axle bracket 36, thus destroying the ride/suspension qualities that RAIDEL is directed to providing. The proposed combination would also cause the RAIDEL system to become unstable in vertical axle articulation as well as in load bearing, thus extending the air spring beyond its limits and creating the risk of possible damage to the air spring and catastrophic air spring and suspension failure. Further the proposed combination will substantially impede the RAIDEL systems ability to maintain roll stability.

It should also be noted that it is completely improper to use the present claimed invention as a guide through the maze of prior art references in order to combine references in just the right way so as to (arguably) achieve the results of the claims at issue. The references cited by the Office Action herein do not suggest or otherwise teach the desirability of the present claimed invention. The present invention has been used as a road map for proposing vaguely defined modifications/combinations to RAIDEL and BORNS to achieve a device that would purportedly include attributes of the present claimed invention. This is not proper. Applicants assert that the claims at issue

are not obvious in view of the proposed modification/combination of RAIDEL and BORNS set out by the office action herein.

Further, each and every limitation of the claims at issue must be considered. In the case of dependent claims, such as claims 5 - 10, this requires that each and every limitation of the independent claim (claims 1-3) and any intervening claims, from which they depend also be considered. In view of the above comments concerning independent claims 1-3, it is believed at dependent claims 5 – 10 are also allowable over the prior art for the same reasons set out above with respect to independent claims 1-3.

### 3. Amended Claims

In the interests of advancing the present case, claims 1 -3 have been amended to further clarify features of embodiments of the invention. More particularly, independent claims 1 – 3 have been amended to specify an air suspension system for a vehicle having a chassis, a front axle housing and a rear axle housing and which incorporates, among other things, **a shackle assembly that connects with the lever arm at a point that is located between the air spring and the axle housing.**

Further, claims 8, 9 and 10 have been amended to rectify various typographical errors. No new matter is introduced by these amendments/corrections.

It should be noted that the prior art does not show, teach or otherwise suggest an air suspension system having each and every element specified and required by independent claims 1 – 3 as originally submitted, or as amended herein. Consideration and allowance of claims 1-3 and 5 – 10 as amended herein is requested.

In view of the amendments to independent claims 1, 2 and 3 herein, it is important to note that each and every limitation of the claim at issue must be considered. In the case of dependent claims, this requires that each and every limitation of the independent claim and any intervening claims, from which they depend

also be considered. In view of the above comments regarding independent claims 1-3 and the amendments herein, Applicants believe that dependent claims 4, 5-10 are in condition for allowance. Reconsideration and allowance of pending claims 1-3 and 5-10, as well as NEW claim 11, is respectfully requested.

### CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims **1 – 3 and 5 - 10** and NEW claim 11 are in condition for allowance. Favorable re-consideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (678) 352-0103.

Respectfully submitted,

**BIDDLE & ASSOCIATES, P.C.**

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